



Gene T. Harris, Ph.D.

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Mission: Each student is highly educated, prepared for leadership and service, and empowered for success as a citizen in a global community.

October 8, 2012

Mr. Mark Long
Director of Special Projects
Auditor of State
88 East Broad Street, 10th Floor
Columbus, Ohio 43215

Dear Mr. Long:

On October 4, 2012 the Auditor of State released his Interim Report on Student Attendance Data and Accountability System. The Interim Report says there were issues with 337 of the 1,236 files reviewed at ten Columbus City Schools. The purpose of this letter is to renew my request for the names of the 337 students whose files the Auditor of State reports presented issues and, with respect to each, a description of the issues found.

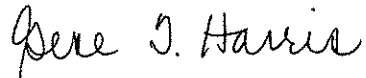
As you will recall when I asked you during our meeting on Wednesday, October 2, 2012 for the identity of these students and the issues associated with their files, you responded that you could not do so "at that time." You did not tell me that the District already knew who the students were. So, I was surprised to read in Friday's *Columbus Dispatch*, this quote from the Auditor's office: "Harris lamented that she can't locate missing-student files because the district doesn't know which ones were reviewed. Bartunek of the auditor's office said that Columbus knows exactly which files were examined. Before the review began, district employees gave auditors "the names of the student and the school where we could find that student's file," Bartunek said." Had one of the Auditor's representatives told us on October 2 that we already had the identity of the 1,236 students, we would have asked who at CCS had provided the information referred to by Ms. Bartunek. We are presently following up internally on this aspect of my request.

But, whether or not we have the list of 1,236 students, we simply do not understand why the Auditor's office will not provide the identity of the 337 student's whose files it found to be problematic and why the Auditor's office will not say what the problem was with each. Even assuming we knew the names of the 1,236 students whose files were reviewed, we would not know which 337 of those files the AOS found deficient nor would we know why. It does not seem reasonable for the Auditor of State to say we found 337 issues, but we won't tell you which files or what the issue was with each.

As I explained to you on Tuesday, October 2, 2012, there are important reasons for providing the requested information. One of the main purposes of any audit is to identify issues and find solutions. It would be much more efficient for us to understand the individual issues and determine the appropriate responses if I and my staff knew the identity of the 337 students whose files are of concern to the AOS. Additionally, this information might help us locate those files that your auditors could not find and, importantly, advance the process of taking steps to prevent the recurrence of legitimate problems with the reporting of student data to EMIS, especially in the absence of such recommendations in the interim report for school districts. The sooner we can do this, the better for our students, taxpayers and the district.

Feel free to contact me directly. Thank you for your attention to this request.

Sincerely,

A handwritten signature in cursive script that reads "Gene T. Harris".

Gene T. Harris, Ph.D.
Superintendent/CEO



Dave Yost • Auditor of State

October 12, 2012

Gene T. Harris
Superintendent/CEO
270 East State Street
Columbus, OH 43215

Dear Dr. Harris,

I am responding to your letter of October 8, 2012 in which you have requested information regarding an audit and investigation presently being conducted of Columbus Public Schools. Specifically, you have requested the identities of students whose files did not document what your Administration reported. Significantly, the information reported was provided by your staff. Further, because of its nature and form, I will address your letter as a public records request.

In the process of the investigation into your administration's management of Columbus Public Schools, it has become evident, and indeed you have commented on the fact, that data manipulation has occurred. Yet, today, it can reasonably be inferred from your October 8 request that you have either no knowledge or understanding of this crisis.

Initially, I am troubled that you have failed to grasp the significance or meaning of the talking points and problem areas which have been identified in the Interim Report of the Auditor of State in an on-going audit of the state's schools, including Columbus Public Schools. In the initial phase of the audit, the Auditor of State's office selected 100 schools from 47 school districts with the highest number of students that took assessment tests and whose test scores were subsequently "rolled up" to the state, thereby alleviating the district from accountability for student performance.

As you know, the report focuses mainly on breaks in enrollment which cause student test scores to be pushed to the statewide composite report card. In this scenario, the local report card includes only students enrolled for the FAY. A student must be enrolled continuously at a single school from the end of October count week to May 10th for grades 3-8 or March 19th for all other grades to qualify for the full academic year of attendance.

You have stated that you wish to take steps "to prevent the recurrence of legitimate problems with the reporting of student data to EMIS," and that you require this information to do so. You are now advising that you have been unable to take steps to insure the integrity of the enrollment information (Code 71 withdrawals) being "created" by your administration, including upper management and principals district wide. Permit me to suggest, the facts are before you. As has

been previously stated, this office has no concerns with the District taking the steps necessary to correct the current situation, provided no public documents are destroyed in the process and actions taken do not otherwise impair our ability to proceed with the ongoing audit.

In further consideration of your request, and again reminding you that this information was obtained from Columbus Public Schools, please be advised of the following:

- (1) The Family Educational Rights and Privacy Acts Statute (FERPA) describes circumstances under which State Educational Agencies (SEAs) are authorized to release data from an education record. This information can be disclosed to organizations carrying out an audit or evaluation of Federal – or State – supported education programs, or for the enforcement of or compliance with Federal legal requirements related to these programs.
- (2) The office of the Auditor of State is using this information authorized under state and federal law and therefore is prohibited from sharing this information with any other entity.
- (3) Except as otherwise provided in sections 117.14 and 117.15 of the Revised Code, an audit report is not a public record under section 149.43 of the Revised Code until copies of the report are filed with the officers enumerated in this section.

It is based upon the foregoing, therefore, I conclude it is not appropriate for this office to share information obtained in the course of the audit with you at this time. I will, however, again request that you refrain from interfering with the on-going investigation and audit. Finally, to imply as you have in your October 8 letter that you are powerless to institute reforms in your system because you lack necessary information could be construed by outside observers as disingenuous. The Columbus Schools must accurately report student data going forward. The information necessary to take action is already within the District and should be used as the basis for much needed reform.

Very Truly Yours,

Dave Yost
Auditor of State



William Owen
Chief Legal Counsel

cc: Robert Trafford, Esq. ✓
Loren Braverman, General Counsel

Robert W. Trafford
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October 29, 2012

William Owen, Esq.
Chief Legal Counsel
Dave Yost – Auditor of State
88 East Broad Street
Columbus, OH 43215

Dear Bill:

Because you, in your capacity as Chief Legal Counsel, have responded to Dr. Harris' October 8, 2012 letter to Mark Long, it is appropriate that I reply for the Columbus City Schools District.

First, I note that much of your letter is not at all responsive to Dr. Harris' letter. The various inferences, accusations, and mischaracterizations of things she has said do not answer her question, nor do they advance an understanding or resolution of the issues under investigation. Accordingly, I hope you will understand that, although we have strong disagreement with your letter, we will simply note here the fact of that disagreement, assure you that we understand the Interim Report, and move on to the things that are important to advancing the legitimate interests of the District's students and residents. We hope you will change your focus as well.

Dr. Harris's request is simple and appropriate. The Auditor of State has publicly issued a report that says a review of 1,236 student files in 10 schools found that 337 of those files did not contain documentation sufficient to support breaks in the student's enrollment. Far from not appreciating what the Interim Report says, the District wants to follow-up on those findings, to see what the files do say, and to explore what happened in those 337 instances. We very much respect the auditors who did this field work, but the District also has personnel who know something about student records and their review and feedback would be very helpful to the District. The Interim Report describes in only the most general terms what deficiencies are being reported (e.g., merely that admission or re-admission dates and withdrawal codes are "unsupported"). The District would benefit greatly from seeing for itself what is in these files, from seeing whether further effort would locate the

missing files or documentation and from seeing where the system is breaking down where that is the case. Simply saying that a particular code or date is "unsupported" really doesn't communicate very much about what the deficiencies are, why they occurred or who may be responsible.

I am sure you understand the perfectly legitimate and appropriate reason for Dr. Harris' request. What neither I, nor anyone else who may have occasion to consider this issue – including the "outside observers" you describe at the end of your letter -- can understand is this: Why is the Auditor of State advancing such obviously tortured excuses for not providing the requested information?

First, you say we don't need to get the information from your office because you got it from us. Then, you turn around and say that somehow federal law prohibits you from giving that information back to us. That position simply makes no sense. The federal law you cite (FERPA) proscribes the release of student data to *third-parties*, it does not proscribe the release of student data *back to the school district from which it came in the first place*. In addition, as you well know, even after the District entered into an agreement under which it provided FERPA regulated data to you, your office, in an effort to get other districts to do what Columbus had already done, asked all school districts, including Columbus, to sign a FERPA related agreement. That agreement – which your office prepared – commits you not to share student data you receive from the District with any other entity without the District's approval. But there is nothing in either agreement that precludes you from providing FERPA-covered data back to the district that provided it to you in the first place.

You know that the names of the students whose files you reviewed originated with the District, and you know that there is no legal impediment to you providing the information we seek. Only your office knows which 337 student files did not contain the support you say was required. All the District has asked is that you give it the names of those 337 students so the District can look at those files for itself.

One final note, your admonition to refrain from interfering with your investigation is misplaced. You well know that Dr. Harris asked the Auditor of State to investigate these issues in August, 2011 – almost a year before your office accepted a *second* invitation from Dr. Harris to do so. At no time has anyone in any way associated with the District in any way interfered with the investigation it requested. On the contrary, you have benefited from unprecedented cooperation. The District waived the privilege for the relevant time period and subject matter; it has responded to numerous subpoenas and requests for records, many of the requests having been made and fulfilled informally without need for a subpoena; countless District employees have made themselves available for interview without need for subpoena, and they have been interviewed without attorneys or other personal representatives. There is nothing your office has requested that it has not been provided. The opposite cannot be said.

Mr. Owen
October 29, 2012
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So, I again ask that you provide the District the requested information. If for some reason you don't want to help the District really understand what happened here – and there is no *legitimate* reason for not providing the requested information – then just say so. We can't force you to approach this constructively. But, to anyone – including those "outside observers" you referred to – the excuses advanced in your letter simply are not credible.

Sincerely,

A handwritten signature in black ink, appearing to read "Buz" followed by a stylized flourish.

Robert W. Trafford

cc: Superintendent Gene T. Harris
Loren L. Braverman, Esq.



Dave Yost • Auditor of State

November 8, 2012

Robert W. Trafford, Esq.
Porter, Wright, Morris & Arthur LLP
41 S. High Street
Columbus, Ohio 43215

Re: Columbus City Schools

Dear Mr. Trafford:

The purpose of this letter is threefold. First, in response to your October 29 letter, please note we will not be releasing audit records at this time as you have previously been advised. The investigation of Columbus City Schools (CCS) is continuing and we are endeavoring to bring this to a conclusion in due course. In the meantime, CCS should continue to ensure that the district is not "dis-enrolling" any students without complete documentation and otherwise comply with Ohio and Federal law.

Secondly, the Investigation of CCS has been segregated from the statewide review of alleged attendance data manipulation and will not be included in any future (statewide) reports. The reason for this action is that unlike the statewide audit, there is a strong likelihood that at the conclusion of the CCS investigation, individuals will be referred for criminal prosecution.

Further, our CCS review has expanded to include an investigation of student grade changing. Grades are purposely being changed, e.g., from "F" to "D," with some students unaware they have actually "achieved" a better grade than recorded by their teacher.

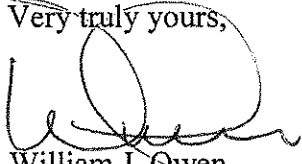
Thirdly, I regret to report our investigators continue to observe organized and persistent interference by the CCS Administration and the agents thereof. This continuing course of conduct does not demonstrate the level of cooperation publically professed by CCS. It is unknown whether this lack of cooperation is known by members of the Board of Education.

The AOS has repeatedly expressed concern regarding what could be viewed as interference with this investigation and intimidation of witnesses. In August, Auditor Yost asked Dr. Harris to cease and desist from interfering with this investigation; to stop confronting AOS witnesses and employing not so subtle forms of intimidation.

Indeed, we are advised that witnesses who give statements to the Auditor of State investigators are being "de-briefed" by or in the presence of attorneys. Witnesses are being asked specifically "what questions were asked" by investigators and "how did you respond?" This practice is confirmed by multiple individuals who are fearful of losing their jobs for telling the truth.¹ I'm sure you agree, there is no need for AOS witnesses employed by CCS to be confronted in this manner, either before or after they are questioned by our investigators.

Finally, please note that on more than one occasion we have requested that your client(s) provide all records demanded in our subpoenas *duces tecum*. Regretfully, we have received from third parties important documents which CCS failed to include in response to our subpoenas.² I ask that our subpoenas be honored. We will continue to deal with this ongoing issue informally with legal counsel for the school district.

Thank you for your assistance in resolving these issues.

Very truly yours,

William J. Owen
Chief Legal Counsel

WJO/cg

cc: Gene T. Harris, Ph.D., Superintendent/CEO
Carolyn Smith, CPA, Internal Auditor
Penelope Rucker, Treasurer
Carol L. Perkins, President
Ramona R. Reyes, Vice President
Gary L. Baker, II
W. Shawna Gibbs
Hanifah Kambon
Bryan O. Steward
Mike Wiles
Loren L. Braverman, Esq

¹ Interference with a criminal investigation is punishable under R.C. 2921.32(A). Hampering or impeding a public official in the performance of lawful duties is punishable under R.C. 2921.31. Attempting to intimidate a witness is punishable under R.C. 2921.04.

² R.C. 2921.12 provides criminal penalties for destroying, concealing or removing a document, knowing an investigation is in progress.

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November 8, 2012

William J. Owen, Esq.
Chief Legal Counsel
Dave Yost – Auditor of State
88 East Broad Street
Columbus, OH 43215

Dear Bill:

I write in response to the letter I received from you this afternoon.

I am sorry to hear that you will not identify the 337 student files as to which you publicly reported some deficiency. It would certainly have been helpful to the District, and quite possibly to the Auditor's office, for the District to be able to look for itself at those files to see what happened and why. Apparently you do not want that to occur, and we cannot force you to be helpful. I will leave it to others to draw the appropriate inferences from your position.

I am also disappointed at your suggestion that there has been "organized and persistent interference" by District personnel and their agents in your investigation. It seems that in almost every letter you write you feel compelled routinely to express concern about what you say could be viewed as interference with the investigation and intimidation of witnesses. These are very serious accusations. And, it is a serious matter when they are made baselessly, as they are here.

Let me be very clear, we are not aware and do not believe that anyone acting on behalf of the District has interfered in any way with your investigation or in any way intimidated any witness or potential witness. The exact opposite is true. In each instance when we or District personnel have been made aware that a current or former District employee has been asked to submit to an interview by your staff we have encouraged that person to cooperate with your request and to answer any and all of your questions truthfully. To the best of our knowledge, all have done so.

The only conduct you specifically refer to in support of your suggestion of interference is the assertion that people your office has talked with have been "de-briefed by or in the presence of attorneys." To be sure, I and others in this firm have talked to some of the same people with whom your office has talked. It is hard to imagine how that would not be the case. We told you in August of our intention to talk with people who may have knowledge about the relevant issues. After initially objecting, your office acknowledged it was perfectly appropriate for us to do so. But these have not been "de-briefing" interviews as you suggest. We independently identify the individuals we think should be interviewed and often only learn that they have been interviewed by your staff after we begin to talk to them. No one we have interviewed has been made to feel uncomfortable about what they have told your office, nor has anyone been discouraged from speaking openly and honestly with your office.

We have every right, if not a responsibility, to talk with current and former District employees about these issues. On those occasions where a question has been asked regarding topics your investigators may have covered, that question is asked for the sole purpose of making sure there is not some question we have overlooked or fact we ought to know. In some recent instances, we have talked with personnel at the middle schools about the files that were reviewed by your staff – we must do that because you refuse to identify those files for us and because understanding what happened with regard to a particular student requires more than simply looking at their files. There is nothing inappropriate about what we are doing, nor can anything we are doing fairly be viewed as interfering with your work or as intimidation of a witness.

Not a single person we have spoken to has expressed any concern about the questions we have asked or the way in which they have been asked. No one has expressed the least bit of concern that there would be any retaliatory action based on their cooperation with your investigation. And, there is absolutely no reason for any District employee to have any such concern.

As I have said to you before, we have not, and you can be assured we will not, in any way interfere with what you are doing nor have we or will we seek to intimidate any witness.

Similarly, there is no merit whatsoever to your suggestion that you have received anything short of exceptional cooperation in the production of documents. The District has gone to great lengths to make timely and thorough responses to the very large number of requests your office has made. Until this letter, there has been only one instance on which you have expressed any concern about what has been provided to you. In that instance, you could not actually identify a document that was not produced, but expressed a concern

William J. Owen, Esq.
November 8, 2012
Page 3

there *might* have been one. If you have a genuine and specific concern about a response to one of your many requests (1) you have not told us what it is and (2) we encourage you to do so and we will see what happened.

I am confident the District has honored both the letter and spirit of its commitment to cooperate in your investigation. You can be assured that we will work with you to resolve any reasonable issue you may have. We ask only that you do the same.

Very truly yours,

A handwritten signature in black ink, appearing to read "R. Trafford", written over a horizontal line.

Robert W. Trafford

c: Gene T. Harris, Ph.D., Superintendent/CEO
Carolyn Smith, CPA, Internal Auditor
Penelope Rucker, Treasurer
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